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**TERMINAL DISCLAIMER TO OBTAIN A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**

Docket Number (Optional)

1530.0060004/EJH/PAC

Re Application of: **HORTON et al.**Application No.: **09/557,907**Filed: **April 21, 2000**For: **Methods For Treating Cancer Using Cytokine-Expressing Polynucleotides**

The owner*, **Vical Incorporated**, of **100** percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term **prior patent** No. **6,875,748** as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said **prior patent** is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the **prior patent** are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the **prior patent**, "as the term of said **prior patent** is presently shortened by any terminal disclaimer," in the event that said **prior patent** later:

expires for failure to pay a maintenance fee;

is held unenforceable;

is found invalid by a court of competent jurisdiction;

is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;

has all claims canceled by a reexamination certificate;

is reissued; or

is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

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2. ☒ The undersigned is an attorney or agent of record. Reg. No. **36,688**

Signature

8/24/05
Date**Eric K. Steffe**

Typed or printed name

(202) 371-2600

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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